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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 22nd December, 1972:—

I

BILL No. XXXVIII OF 1972

A Bill further to amend the Code of Criminal Procedure, 1898.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1972.

2. It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Amendment of section 488.

5 of 1898.

2. In sub-section 8 of section 488 of the Code of Criminal Procedure, 1898, after the words "child", the words "or where the wife or the child resides at the time of institution of the proceeding." shall be added.

STATEMENT OF OBJECTS AND REASONS

Mr. Justice V. Khalid of the Kerala High Court in a judicial pronouncement has recently highlighted the difficulty caused to the wives and the children claiming maintenance by the existing statutory provision which does not enable them to institute the proceedings in the court within whose jurisdiction they reside. This is a very important matter in view of the fact that many a times after desertion by the husband or by the paramour the wife or mother of the illegitimate child, as the case may be, is compelled to take residence in a separate place altogether either in a relation's house or otherwise but section 488 of the Code of Criminal Procedure lays down that the proceedings can be instituted by them only in the courts which may be far away from their usual place of residence. This brings a disability to the maintenance-seekers. The Bill seeks to remove this difficulty.

K. CHANDRASEKHARAN.

II

BILL NO. XXXVI OF 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1972. **Short title.**

2. In article 220 of the Constitution,— **Amendment of article 220.**

(*a*) the words "except the Supreme Court and the other High Courts" shall be omitted; and

(*b*) the Explanation shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The amendment seeks to place the words of Article 220 of the Constitution in the same manner in which they were originally at the time the Constitution was adopted. The words sought to be deleted now were inserted by the Constitution (Seventh Amendment) Act, 1956.

The amendment was probably introduced on account of the fact that there was a dearth of lawyers in the Supreme Court and, therefore, it was decided to attract retired judges of the various High Courts to the Supreme Court Bar. But now, the position has considerably changed.

The Supreme Court Bar Association in its General Body meeting held on 1st September, 1972, has passed a resolution to the effect that no person who has held office as a Judge of a High Court should be entitled to practise as an advocate. *Inter alia*, the resolution has also stressed on the necessity to introduce and enact legislation to improve the conditions of service, scales of pay and pension of the Judges of the High Courts in India and further stressed that no former Judge of a High Court should be appointed to Commissions and other positions. These are however matters for separate legislation or action.

This amendment has become necessary for the formation and development of a healthy and independent Bar in the Supreme Court.

K. CHANDRASEKHARAN.

III

BILL No. XXXIII OF 1972

A Bill to regulate the procedure for prohibiting Judges of the Supreme Court or of a High Court from hearing and deciding the matter in which they are apprenhended to be biased.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called The Judges (Prohibition on hearing in certain cases) Act, 1972.

(*2*) It shall come into force at once.

Definitions.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "court" includes criminal courts;

(b) "decision" means finding, order or judgment;

(c) "High Court" includes a Judicial Commissioner's Court;

(*d*) 'Judge' means—

(*i*) in section 2(g) and section 3 to 12, a Judge of the Supreme Court or of a High Court, and includes the Chief Justice of India and the Chief Justice of a High Court; and

(*ii*) in sections 2(j), 13, 14 and 16, any presiding officer of a Court (including members of a Bench);

(*e*) "matter" means all proceedings in which a judicial decision has to be given;

(*f*) "person" includes all those who can be made parties in a litigation;

(*g*) "perverse" means that no reasonable person, duly instructed and trained in legal procedure, could possibly reach that decision, and in particular, when the decision does not follow, without giving reasons, rulings that are binding on the Judge concerned and have been brought to his notice;

(*h*) "previous" means before the start of the arguments which actually end in a decision of the matter;

(*i*) 'Superior Authority' means the Chief Justice or the seniormost Judge of the court to which the Judge concerned belongs, and in case the Judge concerned is himself the Chief Justice or the seniormost Judge, then in the case of a High Court it means the Supreme Court and in the case of the Supreme Court, it means the President of India.

(2) Words and phrases not defined in this Act shall have the same meaning as in The Judges (Inquiry) Act, 1968. 51 of 1968.

Judge having bias not to hear or decide a matter.

3. No Judge shall hear or decide a matter in which he has or had any previous bias.

Presumption of bias.

4. (*1*) Bias shall be presumed to exist whenever there is any circumstance which can give a reasonable apprehension to any party that the Judge is not absolutely free from any prejudice, pre-judgment or influence in the matter.

(2) In particular, a Judge shall be presumed to have a bias, if—

(*a*) he has or had any interest, pecuniary, professional or otherwise in the matter; or

(*b*) he is related to any of the parties; or

(*c*) he knows any of the persons who are parties in the matter on a personal level, or has served under any such person (except in the capacity of the Presiding Officer of a Court), or has figured as a party, counsel or *pairokar* in any legal proceeding in which any such person was also a party; or

(*d*) he has dealt with that matter in any other capacity; or

(*e*) he has formed or expressed any opinion, final or otherwise, in the matter; or

(*f*) a party has been proceeded against for his contempt.

Certain matters not to be heard if party objects.

5. (*a*) When arguments in a matter have been heard by a Judge (sitting singly or in a Bench), wholly or in part, that Judge shall be deemed to have formed or expressed an opinion about the matter. If for any reason, before decision is given, the matter is taken out of the file of that Judge so as to be treated as a fresh matter, any part to that

matter may express a desire in writing, before fresh arguments actually start, that the Judge may not hear that matter. If this is done, the Judge shall not hear the matter, otherwise he may hear and decide it.

Procedure when previous bias is believed to exist by a party.

6. (*1*) Whenever any party to a matter has reason to think that the matter should not be heard and decided by a Judge due to previous bias, he may write a letter to the Registrar, before the hearing of the matter begins, explaining the circumstances. The Registrar shall show that letter to the Judge concerned. If the Judge agrees with the contents of the letter, or even without agreeing with the contents, agrees that the matter be not listed before him, the Registrar shall make a note on the file to that effect, and the matter shall not be listed before that Judge.

(2) If the Judge does not agree, a copy of that letter shall be served on all the other parties. If no party files an objection within fifteen days of such service, the Registrar shall make the same note with the same effect.

(*3*) If any party files an objection within the aforesaid time, copy of the objection shall be served on all the other parties and they may file their replies If irreconcilable differences still remain in the position taken by the complaining party and that taken by the other parties, the Superior Authority shall hear and decide the question whether that judge can be said to have any previous bias in the matter. The matter shall not be proceeded with till such a question is decided.

Procedure when Judge is aware of circumstances creating previous bias.

7. (*1*) Except in cases covered by section 5, whenever any judge, before whom a matter is listed for hearing, has the slightest feeling that there is any circumstance which may be thought by any party to create in the Judge a previous bias against the party, it shall be his duty *suo moto* either to write to the Registrar to list the matter before some other Judge or to prepare a note explaining those circumstances. Such a note shall be served on the party who might think that the circumstances create previous bias. That party may then proceed as in sub-section (*1*) of section 6 within fifteen days of the service of the note on him. If he does not so proceed, the Judge may hear and decide the matter.

(*2*) If a Judge fails to take action under sub-section (*1*), or contravenes other provisions of this Act, or makes observations or gives a decision which is perverse, his action or failure to take action shall amount to misbehaviour within the meaning of the Judges (Inquiry) Act, 1968. In any inquiry under that Act it shall be a good proof of previous bias that the Judge in fact made observations during the hearing or in the decision which can be called perverse. The Committee conducting the inquiry shall have the power, whether it holds the Judge guilty or not, to cancel such a hearing or decision, and if it does so, that matter shall be heard *de novo* in accordance with section 8:

51 of 1968.

Provided that where such a decision was open to appeal, the decision shall not be cancelled unless the party aggrieved by that decision applied for leave to appeal within time (or the delay in making such application was condoned) but was refused such leave.

(*3*) The Judge shall remain on leave with full pay for the period of any enquiry against him under the Judges (Inquiry) Act, 1968, *i.e.* from the date the motion is admitted in either House of Parliament till the date the proceedings are dropped or the Judge is removed.

51 of 1968.

Procedure when Superior Authority decides the existence of previous bias.

8. Whenever the Superior Authority decides under sub-section (3) of section 6 that the judge can be said to have a previous bias, it shall hear and decide the matter itself. If some other judge, or judges have to be associated with that Superior Authority they shall be, so far as possible, senior to the judge concerned.

Procedure when the Superior Authority is the President of India.

9. Notwithstanding anything contained in this Act, in case the Superior Authority is the President of India, it shall not be necessary for him to give a hearing in the matter. Unless in his opinion the complaint regarding the possibility of previous bias in the Chief Justice of India is absolutely frivolous, he shall order the proceedings to be stayed till the retirement of that Chief Justice of India, and the matter shall be heard only thereafter. All the parties, however, can at any time after such stay agree in writing to have the matter heard and decided by any other judge or judges and the matter shall be so heard and decided.

Decision contravening these provisions to be invalid.

10. (*1*) Every decision in contravention of these provisions shall be invalid.

(2) Any party desiring to file written arguments in a matter in any court in India shall be entitled to do so and whenever a detailed judgment has to be written for giving a decision in the matter, the judgment shall meet all points contained in such written arguments.

Retrospective application of this Act in certain cases.

11. Provisions of this Act shall also apply to those decisions, given before its commencement in which at some stage before the start of the actual arguments which ended in that decision, a request in writing had been delivered to the Registrar or to the Judge concerned or to the Superior Authority, which request showed a desire or hope, directly or indirectly, that the matter be not heard by a Judge who ultimately was a party to the decision. If such a request had been delivered, its later rejection or withdrawal shall be immaterial. The writing may have been signed by the party or by some person or persons who can be seen from the request itself to have been acting in the interest of that party. If the request had been delivered, the requirements of section 5 shall be deemed to have been complied with.

Procedure when decisions prior to the commencement of this Act are desired to be challenged

12. (*1*) In case any party wishes to challenge any decision given before the commencement of this Act on the ground that it is invalid under this Act, he shall write a letter to the Registrar within six months of the commencement of this Act explaining the circumstances. In case in the opinion of the Registrar the matter is simple and the impugned decision is clearly invalid under this Act, he shall inform all other parties of this position and shall proceed to get the matter heard and decided afresh as if it fell under section 8.

(2) If the Registrar is of the opinion that the decision does not become clearly invalid under this Act, or if any party files objection within fifteen days of the service of the Registrar's note on it the Registrar shall refer the matter to the Superior Authority for decision. If the Superior Authority holds that the decision is invalid under this Act, the matter shall be heard and decided afresh as if it fell under section 3.

Procedure when all parties desire a matter to be heard or be not heard by a particular judge.

13. (1) Whenever all parties in a matter express a desire in writing to the office of any court in India that the matter be heard, or be not heard, by any particular judge or judges, the matter shall be heard, or be not heard as the case may be, by that particular Judge or judges.

(2) If due to the working of this section it is found that there are some Judges who do not have enough court work to do due to the unwillingness of the parties to have their matter heard and decided by them, it shall be presumed for the purposes of the Judges (Inquiry) Act, 1968, that they are guilty of misbehaviour in court.

57 of 1968.

Petitions for transfer of cases.

14. No petition for transfer of a case from one court to another shall be heard and decided by any court except in accordance with the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

It has been an unwritten rule of conduct for the Judges that whenever the slightest allegation of bias, personal interest, or prejudgment is made against a judge regarding a particular matter fixed for hearing before him, the judge unhesitatingly orders the matter to be taken out of his list and to be put up before some other judge. This rule of conduct is based on the well-known dictum that:

> "Justice must not only be done but must, manifestly and undoubtedly, appear to be done."

In *Manik Lal* vs. *Dr. Prem Chand* (AIR 1957 SC 425), the Supreme Court observed—

> "Test of bias is not whether in fact a bias has affected the judgment. The test always is and must be whether a litigant could reasonably apprehend bias."

Again in the *Andhra Pradesh State Road Transport Corporation* vs. *Satyanarayana Transport (P) Ltd.* (AIR 1965 SC 1303), the Supreme Court observed:

> "It is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him objectively, fairly and impartially....No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind."

For sometime past, however, instances have been coming to notice in which some judges, against whom such allegations are made, persistently refuse to give up a particular case and continue to hear and decide it. Obviously in such cases grave injustice results to the complaining party. He cannot possibly have the feeling that fair justice has been done to him. Such persistence on the part of a judge undermines the confidence of the public in the judicial system.

During the debate on the Judges (Inquiry) Bill, 1968, several Hon'ble Members of Parliament of all parties made pointed references to instances where biased judges had continued to decide cases and a great and understandable feeling persists that this was not fair. The case of 'Blitz' was particularly cited by several Members, where a judge persisted in sitting to decide the matter even though he had thrice previously appeared as a counsel against Blitz. 51 of 1968.

As the law at present is, if a particular Judge refuses to remove a case from his file, even after clear and admitted allegations, no other authority has the power to order the case to be taken out of the file of that Judge. Such a power does exist in the case of the District Courts (*Vide* section 24 of the Code of Civil Procedure, 1908), but no 5 of 1908.

such provision exists for the Judges of the High Courts or of the Supreme Court. It is, therefore, necessary to make such a provision. Moreover, a codification of the law on the subject will clarify to both the Judges and the litigants as to what kinds of bias, personal interest, pre-judgment etc. shall be presumed to disqualify a Judge from hearing a case. It will be fair both to the Judges and to the litigants, and will enhance public confidence in fair justice.

Hence the Bill.

DWIJENDRALAL SENGUPTA.

B. N. BANERJEE,
Secretary.

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